

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition Nos.: 49-800-11-1-5-00543
49-800-12-1-5-00195
Petitioner: Anthony M. Merlie
Respondent: Marion County Assessor
Parcel No.: 8062078
Assessment Year: 2011 & 2012

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. Petitioner initiated appeals for 2011 and 2012 with the Marion County Property Tax Assessment Board of Appeals (“PTABOA”) by filing Form 130 petitions on August 3, 2011, and January 16, 2013, respectively. On December 19, 2014, the PTABOA issued its Notifications of Final Assessment Determinations. Petitioner then timely filed Form 131 petitions on January 16, 2015, with the Board.
2. Petitioner elected to have his appeal heard under the Board’s small claims procedures. Respondent did not elect to have the appeals removed from those procedures.
3. On February 8, 2017, the Board’s administrative law judge (“ALJ”), Dalene McMillen, held a hearing. Neither the Board nor the ALJ inspected the property.
4. Anthony Merlie, owner, was sworn as a witness for Petitioner. Gabe Deaton, Director of Assessment for the Marion County Assessor’s Office, was sworn as a witness for Respondent.

Facts

5. The property under appeal is a single-family rental property located at 9529 Brightwell Place in Indianapolis.

6. The PTABOA determined the following values:

Year	Land	Improvements	Total
2011	\$22,500	\$98,600	\$121,100
2012	\$22,100	\$109,900	\$132,000

7. Petitioner requested the following values:

Year	Land	Improvements	Total
2011	\$22,500	\$87,500	\$110,000
2012	\$22,500	\$87,500	\$110,000

Record

8. The official record for this matter is made up of the following:

a. A digital recording of the hearing,

b. Exhibits:

- Petitioner Exhibit A: Subject property rental agreement, dated October 24, 2010,
- Petitioner Exhibit B: Subject property rental agreement, dated June 7, 2012,
- Petitioner Exhibit C: Sales disclosure forms for twelve comparable properties,
- Petitioner Exhibit D: 2016 subject property record card (“PRC”),

- Respondent Exhibit 1: 2011 comparative market analysis,
- Respondent Exhibit 2: 2011 subject property PRC,
- Respondent Exhibit 3: 2012 comparative market analysis,
- Respondent Exhibit 4: 2012 subject property PRC,
- Respondent Exhibit 5: Form 130 petition,
- Respondent Exhibit 6: Gross rent multiplier (“GRM”) area map,

- Board Exhibit A: Form 131 petition and attachments,
- Board Exhibit B: Hearing notice,
- Board Exhibit C: Hearing sign-in sheet,

c. These Findings and Conclusions.

Burden of Proof

9. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that his property's assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
10. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b).
11. Second, Ind. Code § 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15," except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), "if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct." Ind. Code § 6-1.1-15-17.2(d).
12. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
13. The assessed value was \$121,100 for both 2010 and 2011. Since there was no change, Petitioner has the burden of proof for 2011. The burden with regard to the 2012 value depends on the resolution of the 2011 matter and will be addressed in turn.

Summary of the Parties' Contentions

14. Petitioner's case:
 - a. The rental rate for the property is \$1,050 per month, or \$12,600 annually. Petitioner contends that he estimated a monthly GRM between 6 and 9. He contends that he arrived at those factors by seeking advice from various accounting firms. Applying each of those factors to the subject property's monthly rental rate, and multiplying by 12 months, results in a market value-in-use of somewhere between \$75,000 and \$113,400. *Merlie testimony; Pet'r Ex. A & B.*

- b. Petitioner also presented twelve sales disclosure forms for condominiums also located in the Towne Parke subdivision. According to Petitioner, the minimum sale price was \$98,000 and the maximum sale price was \$127,101, with an average sale price of \$117,800. Petitioner argues that this is further evidence that the subject property is over-assessed. *Merlie testimony; Pet'r Ex. C.*
- c. With regard to Respondent's contentions, Petitioner claims that Respondent omitted a property located at 2248 Brightwell from both of his comparative market analyses. He argued that property sold on March 18, 2011, for \$117,000, and that its inclusion would have had an impact on Respondent's overall analysis favorable to Petitioner. He further contends that Respondent erroneously attributed a fireplace to the subject property when in fact no such fireplace exists. *Merlie testimony; Pet'r Ex. D.*

15. Respondent's case:

- a. Respondent applied an annual GRM of 130 to the subject property's actual monthly rent of \$1,050, which resulted in a market value-in-use of \$136,500 for both years. Respondent contends that calculation suggests that the subject property is undervalued for 2011 and 2012. However, Respondent is not requesting an increase for 2011 or 2012, only that the current assessed values be sustained. *Deaton testimony; Resp't Ex. 5 & 6.*
- b. Respondent also presented two comparable market analyses. For 2011, he offered nine properties from the Towne Park subdivision. The properties sold between April 9, 2010, and October 30, 2010. The sale prices ranged from \$78.47 per square foot to \$89.64 per square foot, with an average of \$85.07 per square foot. However, he contends that he applied an amount lower than that average to the subject property which translated to a value of \$130,700. He contends that this supports a value of \$121,100 for 2011. *Deaton testimony; Resp't Ex. 1 & 2.*
- c. For 2012, Respondent offered eleven properties from the Towne Park subdivision.¹ The properties sold between April 9, 2010, and January 25, 2012. The sale prices ranged from \$78.47 per square foot to \$89.64 per square foot, with an average of \$84.35 per square foot. That translates to a value of approximately \$131,400 for the subject property which, Respondent contends, supports a value of \$132,000 for 2012. *Deaton testimony; Resp't Ex. 3 & 4.*

¹ All nine of the properties from the 2011 analysis were included as part of the 2012 analysis.

Analysis

16. Petitioner failed to establish a prima facie case for reducing the 2011 assessment. Respondent failed to establish a prima facie case that the 2012 assessment was correct. The Board reached these decisions for the following reasons:
- a. Indiana assesses real property based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual constructions costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
 - b. Regardless of the type of evidence offered, a party must explain how that evidence relates to the property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2011 and 2012, the valuation dates were March 1, 2011, and March 1, 2012, respectively. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
 - c. There is a separate statute, however, regarding the valuation of certain rental properties such as the one at issue. Specifically, Ind. Code § 6-1.1-4-39(b) provides in part that the GRM method "is the preferred method of valuing...real property that has at least one (1) and not more than four (4) rental units..."

2011 Assessment

- d. Petitioner acknowledges that the property is a rental property and should be valued using the GRM method. The GRM method develops an income multiplier by identifying market data for sales of comparable income-producing properties and calculates the ratio of the sale price to the gross income at the time of the sale. An opinion of value can then be calculated by multiplying the GRM by the income base for the subject property.
- e. Here, Petitioner failed to offer any evidence, such as sales or income data, used to support his GRM calculation. He simply testified that he estimated a GRM between 6 and 9 based on "some accounting firms that [he] had sought out." Absent anything further, the Board cannot conclude that the suggested GRM is based on valid market data. Consequently, Petitioner's GRM analysis is not probative of the 2011 proposed assessed value.

- f. Petitioner also offered twelve sales disclosure forms for condominiums located in the Towne Parke subdivision. The average sale price for those properties was \$117,800. Petitioner is essentially relying on a sales comparison approach to establish market value-in-use. See 2011 REAL PROPERTY ASSESSMENT MANUAL at 9. (incorporated by reference at 50 IAC 2.4-1-2) (stating that the sales-comparison approach relies on “sales of comparable improved properties and adjusts the selling prices to reflect the subject property’s total value.”); *see also Long*, 821 N.E.2d 466, 469.
- g. To effectively use the sales-comparison approach as evidence in a property tax appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property are not sufficient. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* At 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- h. Here, Petitioner failed to address any differences between the subject property and the purportedly comparable properties. While the properties were similarly located, Petitioner failed to show if the properties contained the same amenities or were similar in size and age, among other items. Consequently, Petitioner failed to make a meaningful comparison of the purportedly comparable properties to the subject property.
- i. Petitioner failed to make a prima facie case for reducing the 2011 assessment. Where a petitioner has not supported its claim with probative evidence, the respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003). Consequently, the Board orders no change for 2011.

2012 Assessment

- j. Because the assessed value increased from \$121,100 in 2011 to \$132,000 in 2012, which represents an increase in excess of 5%, Respondent has the burden of proving that the 2012 assessment is correct.
- k. Respondent also attempted to offer a GRM analysis as part of his evidence. However, as did Petitioner, Respondent failed to offer any evidence such as sales or income data to support his GRM calculation. He simply offered a GRM map of Marion County that, on its face, seemingly arbitrarily assigns GRM factors to various sectors of the county. As was the case for Petitioner, absent anything further, the Board cannot conclude that Respondent’s suggested GRM of 130 is

based on valid market data. Consequently, Respondent's GRM analysis is not probative evidence that the 2012 assessed value is correct.

- l. Respondent also offered a comparative market analysis of properties in the area. He based his analysis on an average price per square foot. He did not, however, attempt to account for any relevant differences among the properties. As discussed previously, such analysis has little or no probative value.
- m. Thus, Respondent failed to establish a prima facie case that the 2012 assessed value is correct. Because he failed to meet his burden of proof, the 2012 assessment must be reduced to the previous year's level of \$121,100. That, however, does not end the Board's inquiry, because Petitioner requested an assessed value of \$110,000 for 2012. As explained above, Petitioner has the burden of proving that he is entitled to that additional reduction.
- n. Petitioner presented the same evidence for 2012 that he did for 2011. For the same reasons that were discussed with regard to Petitioner's 2011 appeal, the Board finds Petitioner did not provide substantial evidence to support his proposed value for 2012.

Conclusion

17. Petitioner failed to provide probative evidence for reducing the 2011 assessment and Respondent failed to provide probative evidence that the 2012 assessment is correct. Furthermore, Petitioner failed to provide probative evidence to support a further reduction for 2012.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Board determines that the 2011 assessed value should remain at \$121,100 and that the 2012 assessed value should be reduced to \$121,100.

ISSUED: May 8, 2017

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.